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20 UNITED STATES DISTRICT COURT
21 NORTHERN DISTRICT OF CALIFORNIA

22 GUADALUPE JIMENEZ,

23 Case No. C10-01128 PJH

Plaintiffs,

24 [PROPOSED] ORDER OF FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT AND JUDGMENT

v.
25 FIRST, LAST & ALWAYS, INC.,

Date: May 9, 2012

Defendant.

Time: 9:00 a.m.

FIRST, LAST & ALWAYS, INC.

Dept.: Hon. Phyllis J. Hamilton

Cross-Complainant,

v.
26 GUADALUPE JIMENEZ,

Cross-Defendant.

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2 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

3 Plaintiffs' unopposed Motion for Final Approval of Class Action Settlement came before this
 4 Court on May 9, 2012. The proposed settlement in this case was preliminarily approved by this
 5 Court on October 5, 2011. Pursuant to the Court's Preliminary Approval Order and the Notice
 6 provided to the Class, the Court conducted a final fairness hearing as required by Federal Rule of
 7 Civil Procedure 23(e). The Court has reviewed the materials submitted by the parties and has heard
 8 arguments presented by counsel at the hearing. For the reasons cited on the record as well as those
 9 stated hereafter, the Court finds and orders as follows:

10 The Court hereby grants final approval of the Class Settlement based upon the terms set forth
 11 in the Preliminary Approval Order and the Stipulation and Agreement of Compromise and
 12 Settlement ("Settlement" or "Settlement Agreement") filed by the parties, as modified by the parties'
 13 September 28, 2011 filings. The Settlement appears to be fair, adequate, and reasonable to the Class.

- 14 1. The Court finds that this action satisfies the requirements of Rule 23 and the Fair
 15 Labor Standards Act and further finds that the Class has at all times been adequately
 16 represented by the Named Plaintiffs and Class Counsel. For purposes of settlement,
 17 the Settlement Class shall consist of all hourly construction employees employed by
 18 First, Last & Always, Inc. in the field at any time from March 17, 2006 to the date of
 19 preliminary approval of the Settlement, who do not timely exclude themselves from
 20 the Settlement, provided, however, that only those Class Members who sign and
 21 return a Claim Form opting in to the Class and consenting to the Settlement shall be
 22 deemed to release any claims under the Fair Labor Standards Act ("FLSA").
- 23 2. The Notice approved by the Court was provided by First Class direct mail to the last-
 24 known address of each of the individuals identified as Class Members. In addition,
 25 follow-up efforts were made to send the Notice to those individuals whose original
 26 notices were returned as undeliverable. The Notice adequately described all of the
 27 relevant and necessary parts of the proposed Settlement Agreement, the request for
 28 incentive payments to the Named Plaintiffs, and Class Counsel's motion for an award
 of attorneys' fees and costs.

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- 2 3. The Court finds that the Notice given to the Class fully complied with Rule 23 and
- 3 the FLSA, was the best notice practicable, satisfied all constitutional due process
- 4 concerns, and provides the Court with jurisdiction over the Class Members.
- 5 4. The Court has concluded that the Settlement, as set forth in the Settlement Agreement
- 6 executed by the parties, is fair, reasonable, and adequate under state and federal laws,
- 7 including the Fair Labor Standards Act 29 U.S.C. § 200 et. seq. The Court finds that
- 8 the uncertainty and delay of further litigation strongly supports the reasonableness
- 9 and adequacy of the \$500,000 Settlement Fund established pursuant to the Settlement
- 10 Agreement.
- 11 5. The disposition of unclaimed funds, and the savings from the Court's award of only
- 12 \$3,750 each to the Representative Plaintiffs Jimenez and Alvarez, rather than the
- 13 \$7,500 allocated in the settlement, as well as any savings if the Court awards less than
- 14 \$125,000 in fees or less than \$125,000 in costs, will be determined by the Court's
- 15 ruling on Defendants' motion that unclaimed settlement monies will revert to
- 16 Defendants (ECF No. 37).
- 17 6. Out of the identified Class Members who were notified, none has objected to any
- 18 aspect of the proposed settlement. The reaction of the Class to the proposed
- 19 settlement strongly supports the conclusion that the proposed Settlement is fair,
- 20 reasonable, and adequate.
- 21 7. The Settlement is HEREBY APPROVED in its entirety.
- 22 8. The Settlement Fund shall be dispersed in accordance with the Settlement Agreement
- 23 as detailed in the Motion for Conditional Certification of Settlement Class,
- 24 Preliminary Approval of Settlement, and Approval of Class Notice and Settlement
- 25 Administrator, granted on October 5, 2011.
- 26 9. Representative Plaintiffs Guadalupe Jimenez and Francisco Alvarez are hereby
- 27 awarded \$3,750 each for their time and effort in pursuing this litigation.
- 28 10. Plaintiffs' application for Attorneys' fees in the amount of \$125,000, and costs in the
- amount of \$5,983.79 (not to exceed \$10,000) is hereby granted in accordance with *In*
- 2.

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2 *re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1175 (S.D. Cal. 2007); *Staton*
3 *v. Boeing Co.*, 327 F.3d 938, 967 (9th Cir. 2003); and *Boeing Co. v. Van Gemert*, 444
4 U.S. 472, 478 (1980).

- 5 11. This case is hereby DISMISSED WITH PREJUDICE, with each party to bear his,
6 her, or its own costs, except as set forth herein.
7 12. The Court ENJOINS any Class Member, whether acting directly, in a representative
8 capacity, or in any other capacity, and whether or not any such Class Member has
9 appeared in the litigation, from asserting, instituting or prosecuting in any capacity in
10 any court or governmental agency any claims released in the Settlement against
11 Defendants or any other parties released by the Settlement, unless the Class Member
12 has sent a timely exclusion form opting out of the Settlement. Provided, however,
13 that this injunction shall not apply to any FLSA claims of any Class Members who
14 have not returned a signed Claim Form opting in to the FLSA Settlement.
15 13. The Court retains jurisdiction over this matter until all the settlement monies have
16 been disbursed.

17 This is a final judgment.

18 IT IS SO ORDERED.

19 Dated: May 17, 2012

20 Firmwide:101058335.1 065131.1001

